

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

LEHMAN BROTHERS HOLDINGS INC., *et al.*,

Case No. 08-13555-SCC

Chapter 11

Debtors.

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LEHMAN BROTHERS HOLDINGS INC.,

Adversary Proceeding

Plaintiff,

No. 16-01313-scc

- against -

FIRST CALIFORNIA MORTGAGE COMPANY,

Defendant.

-----X

**NOTICE OF MOTION TO WITHDRAW AMERICAN MORTGAGE LAW GROUP P.C.
AND BLANK ROME LLP AS ATTORNEYS OF RECORD FOR FIRST CALIFORNIA
MORTGAGE COMPANY PURSUANT TO LOCAL BANKRUPTCY RULE 2090-1(e)**

PLEASE TAKE NOTICE that a motion has been made by AMERICAN MORTGAGE
LAW GROUP P.C. and BLANK ROME LLP for the date, time and relief set forth below.

RETURN DATE AND TIME:

To Be Scheduled by the Court

JUDGE:

SHELLY C. CHAPMAN

COURTROOM:

1 Bowling Green – Courtroom 623
New York, New York 10004

RELIEF SOUGHT:

MOTION FOR AN ORDER PURSUANT
TO LOCAL RULE 2090-1(e) REMOVING
AMERICAN MORTGAGE LAW GROUP
P.C. AND BLANK ROME LLP AS
ATTORNEYS OF RECORD FOR
DEFENDANT FIRST CALIFORNIA
MORTGAGE COMPANY

PLEASE TAKE FURTHER NOTICE that answering papers, if any, must be filed with the Clerk of the United States Bankruptcy Court and must be served upon American Mortgage Law Group P.C. and Blank Rome LLP at least five (5) days prior to the return date of this motion.

DATED: August 30, 2018

Respectfully submitted,

AMERICAN MORTGAGE LAW GROUP, P.C.

By: /s/ Tracy L. Henderson
Tracy L. Henderson
775 Baywood Drive, Suite 100
Petaluma, California 94954
(415) 878-0030

BLANK ROME LLP

By: /s/ Timothy W. Salter
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New York, New York 10174
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**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO WITHDRAW AS
COUNSEL**

Pursuant to Local Rule 2090-1(e) of the Local Bankruptcy Rules, American Mortgage Law Group P.C. (“AMLG”) and Blank Rome LLP (“Blank Rome”) respectfully submit this Memorandum of Law in support of their Motion to Withdraw as Counsel of Record for defendant First California Mortgage Company (“First Cal”) in this adversary proceeding.

PRELIMINARY STATEMENT AND BACKGROUND FACTS

As set forth more fully in the declaration of Tracy L. Henderson, Esq. (“Henderson Dec.”), AMLG and Blank Rome, First Cal’s attorneys of record, seek leave to withdraw as counsel for First Cal in this action. Despite AMLG and Blank Rome’s performing agreed upon legal services on its behalf, First Cal has failed to satisfy its contractual obligations to AMLG and Blank Rome to pay invoiced legal fees and expenses on a timely basis. Communications with First Cal have made clear that it does not intend to pay its legal fees, seriously impairing

AMLG and Blank Rome's ability to represent them. Accordingly, AMLG and Blank Rome seek the Court's permission to terminate their representation of First Cal and withdraw as its counsels of record. AMLG and Blank Rome's withdrawal will not prejudice the litigation, nor substantially impede the progress of this action, as First Cal has until the October 2, 2018, status conference to secure new representation.

ARGUMENT

I. The Rules of Professional Conduct and Local Bankruptcy Rule Relieve An Attorney Of Record By Order Of Court

Pursuant to Local Rule 2090-1(e) of the Southern District of New York, "an attorney who has appeared as attorney of record for a party may be relieved . . . by order of the Court Such an order may be granted only upon a showing by affidavit or otherwise of satisfactory reasons for withdrawal" Rule 1.16 of New York's Rules of Professional Conduct permits withdrawal of counsel where the client "deliberately disregards an agreement or obligation to the lawyer as to expenses or fees." N.Y. Prof. Conduct Rule 1.16.

II. First Cal's Failure to Pay Its Legal Fees and Expenses Constitutes Sufficient Cause for Permitting the Withdrawal of Its Counsel

The Second Circuit has acknowledged that "where the client 'deliberately disregarded' financial obligations," nonpayment of legal fees "may constitute 'good cause to withdraw...'" *United States v. Parker*, 439 F.3d 81, 104 (2d Cir. 2006) (quoting *McGuire v. Wilson*, 735 F. Supp. 83, 84 (S.D.N.Y. 1990) and N.Y. Code of Prof'l Responsibility D.R. 2-110(C)(a)(f)). Similarly, courts have consistently found the failure to pay legal fees to be a legitimate ground for granting a motion to withdraw as counsel. *See, e.g., Blue Angel Films, Ltd. v. First Look Studios, Inc.*, No. 08 Civ. 6469 (DAB) (JCF), 2011 U.S. Dist. LEXIS 16674, at *7-8 (S.D.N.Y. Feb. 17, 2011) ("Although there is no clear standard for what may be considered a 'satisfactory

reason' for allowing a withdrawal, it seems evident that the non-payment of legal fees constitutes such a reason.”); *Diarama Trading Co., Inc. v. J. Walter Thompson U.S.A., Inc.*, No. 01 Civ. 2950 (DAB), 2005 U.S. Dist. LEXIS 17008, at *1 (S.D.N.Y. Aug. 15, 2005) (“Satisfactory reasons include failure to pay legal fees.”) (internal citations omitted); *Cower v. Albany Law Sch. of Union Univ.*, No. 04 Civ. 0643 (DAB), 2005 U.S. Dist. LEXIS 13669, at *16 (S.D.N.Y. July 8, 2005) (“It is well settled that nonpayment of fees is a legitimate ground for granting counsel's motion to withdraw.”) (citation omitted); *HCC, Inc. v. R H & M Mach. Co.*, No. 96 Civ. 4920 (PKL), 1998 U.S. Dist. LEXIS 10977, at *1 (S.D.N.Y. July 20, 1998) (“It is well-settled that non-payment of fees is a valid basis for granting counsel’s motion to withdraw.”); *WABC-AM Radio, Inc. v. Vlahos*, 89 Civ. 1645, 1992 WL 276550, at *1-2 (S.D.N.Y. Sept. 29, 1992) (granting motions to withdraw on ground of client's failure to pay fees even if this would cause a delay in the litigation).

Pursuant to these authorities, where, as here, a client fails to pay fees for legal services rendered or is unable or unwilling to pay for services to be rendered in the future, withdrawal of its counsel should be permitted. Thus, in light of First Cal’s continual failure to honor their contractual obligations to pay AMLG and Blank Rome’s invoices for its legal fees and expenses, this motion to be relieved as counsels of record for First Cal should be granted.

III. Withdrawal of Counsel Will Not Prejudice First Cal

First Cal will not be prejudiced by AMLG and Blank Rome’s withdrawal as counsel. No dispositive motions are pending before this Court, and there is sufficient time for First Cal to secure new representation prior to the upcoming October 2, 2018, status conference. To date, the deadline for First Cal to file an answer to the complaint has not been set and, therefore, any new counsel retained by First Cal will have ample time to familiarize itself with this case and assess

the appropriate course of action. Notably, and as set forth in the Henderson Affirmation, First Cal has indicated that it has already lined up potential representation.

CONCLUSION

For the foregoing reasons, AMLG and Blank Rome respectfully request that the Court grant their motion to withdraw as counsel of record for First Cal. A proposed form of order granting the relief requested herein is annexed hereto as Exhibit A.

Dated: August 30, 2018

AMERICAN MORTGAGE LAW GROUP, P.C.

By: /s/ Tracy L. Henderson
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